

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

FILED  
DES MOINES, IOWA  
00 DEC 21 PM 4:54  
CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

KIMBERLY K. ROBISON,

Plaintiff,

vs.

ENGINEERED PLASTIC  
COMPONENTS, INC. (EPC) and  
REZA KARGARZADEH,

Defendants

4-99-CV-90210

JURY INSTRUCTIONS

TABLE OF CONTENTS

PRELIMINARY INSTRUCTIONS

- No. 1 — Preliminary instructions
- No. 2 — Statement of the case
- No. 3 — Duty of jurors; equals in court
- No. 4 — Order of trial
- No. 5 — Definition of evidence
- No. 6 — Credibility of witnesses
- No. 7 — Stipulated facts
- No. 8 — Depositions
- No. 9 — Interrogatories
- No. 10 — Objections
- No. 11 — Bench conferences
- No. 12 — Note-taking
- No. 13 — Burden of proof
- No. 14 — Numbered documents
- No. 15 — Documents marked "confidential"
- No. 16 — Admonition

## FINAL INSTRUCTIONS

- No. 1 — Explanatory
  - No. 2 — "Disparate treatment" claim against EPC – essential elements
  - No. 3 — "Same decision"
  - No. 4 — "Sexually hostile work environment" claim against EPC – essential elements
  - No. 5 — Testimony of other employees
  - No. 6 — EPC's "affirmative defense"
  - No. 7 — Compensatory damages
  - No. 8 — Nominal damages
  - No. 9 — Punitive damages
  - No. 10 — "Malice or with reckless indifference" defined
  - No. 11 — "Assault" claim against Mr. Kargarzadeh – essential elements
  - No. 12 — Assault damages
  - No. 13 — Duties of deliberation
-

## **PRELIMINARY INSTRUCTION NO. 1 — PRELIMINARY INSTRUCTIONS**

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed. In considering these instructions, the order in which they are given is not important.

---

## **PRELIMINARY INSTRUCTION NO. 2 — STATEMENT OF THE CASE**

The following brief summary of the case is not to be considered evidence or proof of any facts or events in the case. It simply informs you of the factual disputes between the parties.

This is a civil case involving discrimination based on sex, brought by the Plaintiff, Kimberly Robison, against her former employer, Engineered Plastic Components Inc., a maker of plastics products in Grinnell, Iowa. For convenience, I shall refer to thIS Defendant as simply EPC.

In this case, Kimberly Robison, claims that EPC discriminated against her and harassed her on the basis of her sex. For example, Ms. Robison claims that EPC failed to train her on the forklift because she is a woman.

Plaintiff also claims she was assaulted by Mr. Kargarzadeh. She claims she is entitled to money damages.

Defendants, EPC and Reza Kargarzadeh, deny all of plaintiff's claims and they also deny that plaintiff is entitled to money damages. Defendants assert there was a harassment policy in place at EPC; that Plaintiff, if she was harassed, failed to follow the harassment policy. The Defendants EPC and Mr. Kargazadeh also assert that Plaintiff was paid the same amount as male employees in the same position; and that Plaintiff's position in Quality Control did not require the need for a forklift. Finally, the Defendants claim that Plaintiff voluntarily quit her position with EPC to take a higher paying job and that she asked to return to EPC shortly thereafter.

---

You must not consider this summary as proof of any claim. You and you alone will decide what the facts are from the evidence presented at trial. You also will apply the law which I will give to you in these preliminary and final instructions.

---

**PRELIMINARY INSTRUCTION NO. 3 — DUTY OF JURORS;  
EQUALS IN COURT**

As I just stated, it will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are and then apply those facts to the law which I will give you in these preliminary instructions, any instructions given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I will give it to you.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. An individual, such as Ms. Robison, and a corporation, such as EPC., stand equal before the law, and are entitled to the same fair consideration by you. The mere fact that EPC is a corporation, and not an individual, does not mean that it is entitled to any greater or lesser consideration by you.

However, when a corporation is involved, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of the corporation may

bind the corporation by the acts and declarations made while acting within the scope of the authority delegated to the employee by the corporation, or within the scope of the employee's or agent's duties as an employee or agent of the corporation. Thus, if you find that any of EPC's agents, managers, or supervisors, had notice of sex discrimination against Plaintiff Kimberly Robison, then you must find that corporate defendant EPC had notice as well. A corporate defendant is charged with information about which its agents, managers, or supervisors had knowledge.

---

## **PRELIMINARY INSTRUCTION NO. 4 — ORDER OF TRIAL**

Before I give you further instructions, let me tell you how this trial will proceed.

First, the plaintiff's attorney will make an opening statement. Next, the defendant's attorney will make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiff will then present evidence and witnesses and the defendant may cross-examine. Following the plaintiff's case, the defendant may present evidence and witnesses and the plaintiff may cross-examine. Following the defendant's case, the plaintiff may take further opportunity to present additional evidence.

After the presentation of evidence is completed, I will give you the final instructions on the law that you are to apply in reaching your verdict. The attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you some final instructions on deliberations. After that you will retire to deliberate on your verdict.



## **PRELIMINARY INSTRUCTION NO. 5 — DEFINITION OF EVIDENCE**

You shall base your verdict only upon the evidence, these instructions, and other instructions that I may give you during trial.

“Evidence” is:

1. Testimony in person or testimony previously given, which includes depositions or videotaped depositions.
2. Exhibits admitted into evidence by the court.
3. Stipulations, which are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

The following are not evidence:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I shall tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

---

## **PRELIMINARY INSTRUCTION NO. 6 — CREDIBILITY OF WITNESSES**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**PRELIMINARY INSTRUCTION NO. 7 — STIPULATED FACTS**

The plaintiff and defendant have agreed or may agree or “stipulate” to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts as having been proved.

---

## **PRELIMINARY INSTRUCTION NO. 8 — DEPOSITIONS**

Certain testimony from a deposition may be read into evidence. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

---

## **PRELIMINARY INSTRUCTION NO. 9 — INTERROGATORIES**

During this trial, you may hear the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

---

## **PRELIMINARY INSTRUCTION NO. 10 — OBJECTIONS**

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the lawyer for each party to object when another party offers testimony or other evidence that the lawyer believes is not properly admissible. You should not show prejudice against a lawyer or the party the lawyer represents because the lawyer has made objections. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. Also, if I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

---

**PRELIMINARY INSTRUCTION NO. 11 — BENCH CONFERENCES**

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

---

## **PRELIMINARY INSTRUCTION NO. 12 — NOTE-TAKING**

If you want to take notes during the trial, you may. However, it is difficult to take detailed notes and pay attention to what the witnesses are saying. If you do take notes, be sure that your note-taking does not interfere with listening to and considering all the evidence. Also, if you take notes, do not discuss them with anyone before you begin your deliberations. Do not take your notes with you at the end of the day. Be sure to leave them on your chair in the courtroom. The court attendant will safeguard the notes. No one will read them. The notes will remain confidential throughout the trial and will be destroyed at the conclusion of the trial.

If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence. You cannot give this responsibility to someone who is taking notes. We depend on the judgment of all members of the jury; you must all remember and consider the evidence in this case.

Whether or not you take notes, you should rely on your own memory regarding what was said. Your notes are not evidence. A juror's notes are not more reliable than the memory of another juror who chooses to consider the evidence carefully without taking notes.

You will notice that we do have an official court reporter making a record of the trial. However, we will have not typewritten transcripts of this record available for your use in reaching your verdict.

---



### **PRELIMINARY INSTRUCTION NO. 13 — BURDEN OF PROOF**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. Plaintiff Kimberly Robison has the burden of proving by the greater weight of the evidence her claims of (1) disparate treatment; (2) sexually hostile work environment; and (3) assault. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, then you must conclude that issue has not been proved.

The “greater weight of the evidence” is not necessarily determined by the greater number of witnesses or exhibits a party has presented. The testimony of a single witness that produces a belief in the likelihood of truth is sufficient for proof of any fact and would justify a verdict in accordance with such testimony. This is so, even though a number of witnesses may have testified to the contrary, if after consideration of all of the evidence in the case, you hold a greater belief in the accuracy and reliability of that one witness.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

---

**PRELIMINARY INSTRUCTION NO. 14 — NUMBERED DOCUMENTS**

During the preparation for the trial of this matter many of the documents being used as evidence have been marked or stamped with a number called a "Bates Number".

These documents were so marked for ease of identification by either party and you will attach no special meaning to the fact a document is or is not stamped with a number, to the sequence or lack of sequence of the numbering of documents or to the use or objection to any number on a document by either party.

---

**PRELIMINARY INSTRUCTION NO. 15 – DOCUMENTS MARKED  
"CONFIDENTIAL"**

During the trial of this matter some of the documents being used as evidence may have been marked or stamped as "confidential." These documents were earlier ordered to be treated as confidential in this matter by the Court and you will attach no special meaning to the use or objection to the use of the documents by any party.

You should not divulge or use any documents that have been marked or stamped as "confidential" in this matter for any purpose other than in your deliberations in this trial.

---

## **PRELIMINARY INSTRUCTION NO. 16 — ADMONITION**

To ensure fairness, you as jurors must obey the following rules:

*First*, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

*Fourth*, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because they are not supposed to talk or visit with you either.

*Fifth*, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any

---

newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know more about the matter than anyone will learn through the news media.

*Sixth*, do not do any research or make any investigation about the case on your own.

*Seventh*, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

---

## **FINAL INSTRUCTION NO. 1 — EXPLANATORY**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions, called Final Instructions.

These Final Instructions concern the actual claims brought by Ms. Robison against EPC and against its owner and president Mr. Kargarzadeh.

Ms. Robison brings 3 claims in this case. Claim #1 is a claim of disparate treatment against EPC. This will be referred to as Plaintiff's "disparate treatment claim." Claim #2 is a claim of sexually hostile work environment against EPC. I will refer to this as Plaintiff's "sexually hostile work environment claim." Finally, Claim #3 is an assault claim against Mr. Kargarzadeh. I will refer to this as Plaintiff's "assault claim." I will give you Final Instructions which explain these 3 claims in more detail.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

---

**FINAL INSTRUCTION NO. 2 — "DISPARATE TREATMENT" CLAIM AGAINST  
EPC — ESSENTIAL ELEMENTS**

Plaintiff Kimberly Robison alleges that EPC treated her differently because of her sex. In order for Ms. Robison to win on this "disparate treatment" claim, she must prove all of the following essential elements by the greater weight of the evidence:

1. Defendant EPC did not train Plaintiff on the forklift; and
2. Plaintiff's sex was a motivating factor in EPC's decision not to train Plaintiff on the forklift.  
*(Note: The term "motivating factor" means a consideration that moved the Defendant toward its decision.)*

If Ms. Robison has not proved each of these essential elements by the greater weight of the evidence, then your verdict must be for Defendant EPC on this claim.

If Ms. Robison has proved each of these essential elements by the greater weight of the evidence, then you must answer the "same decision" question that is posed Final Instruction No. 3.

---

### **FINAL INSTRUCTION NO. 3 — "SAME DECISION"**

If you find in favor of Plaintiff on her disparate treatment claim, then you must decide if the Defendant would have made the *same decision* regardless of the Plaintiff's sex.

To make this finding, answer the following question:

Has Defendant EPC proved by the greater weight of the evidence that EPC would have not trained Plaintiff on the forklift regardless of her sex?

If you answer "Yes" to this question, then you are not to award Plaintiff any compensatory damages as explained in Final Instruction No. 7, but you must award her "nominal damages" of One Dollar (\$1.00) as described in Final Instruction No. 8.

If you answer "No" to this question, then you are to determine the amount of compensatory damages as explained in Final Instruction No. 7 to award Plaintiff. You may also, but are not required to, consider awarding Plaintiff punitive damages as explained in Final Instruction No. 9.

---



**FINAL INSTRUCTION NO. 4 — "SEXUALLY HOSTILE WORK  
ENVIRONMENT" CLAIM AGAINST EPC— ESSENTIAL ELEMENTS**

Your verdict must be for plaintiff Kimberly Robison and against Defendant EPC on plaintiff's sexually hostile work environment claim if all 5 of the following elements have been proved by the greater weight of the evidence:

1. Plaintiff was subjected to verbal or physical conduct;
2. Such conduct was unwelcome;

*(Note: Conduct is "unwelcome" if the Plaintiff did not solicit or invite the conduct and regarded the conduct as undesirable or offensive.)*

3. Such conduct was based on plaintiff's sex;
4. Such conduct was sufficiently severe or pervasive that a reasonable person in plaintiff's position would find plaintiff's work environment to be hostile or abusive;

*(Note: Whether an environment is sufficiently hostile or abusive must be determined by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. However, no single factor is required in order to find a work environment sexually hostile or abusive. Anti-harassment law does not prohibit genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex. Therefore, simple teasing, offhand comments, or isolated incidents (unless extremely serious) will not amount to a sexually hostile work environment)*

5. At the time such conduct occurred and as a result of such conduct, plaintiff believed her work environment to be hostile or abusive.

If any of the above elements has not been proved by the greater weight of the evidence, or if defendant has proved its affirmative defense under Final Instruction No. 6, your verdict must be for the defendant on this claim.

However, if you find that Ms. Robison has proven all of these elements by the greater weight of the evidence, then your verdict must be for Plaintiff on this claim.

---

**FINAL INSTRUCTION NO. 5 — TESTIMONY OF OTHER EMPLOYEES**

During trial you have heard testimony from witnesses who were not employed at EPC during the time that Ms. Robison was employed at EPC from June 9, 1997 to February 3, 1998. You may not consider their testimony as evidence regarding the work environment of Ms. Robison during her employment, nor may you consider the evidence of prior alleged conduct of Mr. Kargarzadeh as proof that he acted in conformity therewith regarding Ms. Robison. This type of evidence may only be considered as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake on the part of Mr. Kargarzadeh as it relates to Ms. Robison's complaint.

---

## **FINAL INSTRUCTION NO. 6 — EPC's "AFFIRMATIVE DEFENSE"**

EPC has asserted an "affirmative defense" to Plaintiff's sexually hostile work environment claim. This instruction is to be used only in the event you find for Plaintiff on her sexually hostile work environment claim.

In order for EPC to succeed on its affirmative defense, EPC must show, by the greater weight of the evidence, that:

1. EPC exercised reasonable care to prevent and to correct promptly any sexually harassing behavior; and
2. Kimberly Robison unreasonably failed to take advantage of any preventative or corrective opportunities provided by EPC or to otherwise avoid the harm.

If EPC has failed to prove both elements of this affirmative defense, then Ms. Robison is entitled to compensatory damages in some amount on her sexually hostile work environment claim. Compensatory damages are explained in Final Instruction No. 7.

However, if EPC has proven both elements of its affirmative defense then Ms. Robison can collect no damages against EPC on Ms. Robison's sexually hostile work environment claim and you must find in favor of EPC on this claim.

---

## FINAL INSTRUCTION NO. 7 — COMPENSATORY DAMAGES

Compensatory damages represent the amount of money you award the Plaintiff which will fairly and justly compensates her for any damages you find she has sustained as a direct result of EPC's conduct. Because Plaintiff asserts two claims against EPC — namely a disparate treatment claim and a sexually hostile work environment claim — she can recover compensatory damages for violations of one or both claims. Remember, the Plaintiff must prove her damages by the greater weight of the evidence. I will now explain the type of compensatory damages that may be available to the Plaintiff for her two claims against EPC:

- (1) **Claim #1: Disparate treatment claim** — If you find that Ms. Robison has proven all the essential elements of her disparate treatment claim (see Final Instruction No. 2) and if you answered “No” to the “same decision” question in Final Instruction No. 3, then you may award Plaintiff the following type of compensatory damages:

— <sup>RWP</sup> ~~present~~ emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life (calculated from the time of her injury to the date of your verdict).

- (2) **Claim #2: Sexually hostile work environment** — If you find that Ms. Robison has proven all the essential of her sexually hostile work environment claim (see Final Instruction No. 4), and if you find that EPC has not proven its affirmative defense (as explained in Final Instruction No. 6), then you may award Plaintiff the following type of compensatory damages:

— <sup>RWP</sup> ~~present~~ emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life (calculated from the time of her injury to the date of your verdict).

I will now tell you some final rules to remember when determining compensatory damages in this case. Throughout your deliberations, you must not engage in any speculation, guess, or conjecture. The amount you assess for compensatory damage must not exceed the amount caused by EPC as proved by the evidence.

You are also instructed that a plaintiff has a duty under the law to "mitigate" his or her damages--that is, to exercise reasonable diligence under the circumstances to minimize his or her damages. Therefore, if you find that EPC has proven by the greater weight of the evidence that Ms. Robison failed to seek out or take advantage of an opportunity that was

---

reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an opportunity.

---

### **FINAL INSTRUCTION NO. 8 — “NOMINAL” DAMAGES**

If you find in favor of Plaintiff on her disparate treatment claim, as explained in Final Instruction No. 2, but you find that Plaintiff has not proved compensatory damages, (which is to say monetary value), then you must return a verdict for Plaintiff in the nominal amount of One Dollar (\$1.00).

---

### **FINAL INSTRUCTION NO. 9 — PUNITIVE DAMAGES (Against EPC only)**

In addition to compensatory damages, the law permits the jury under certain circumstances to award the injured Plaintiff punitive damages in order to punish the Defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

In order to award Plaintiff punitive damages against EPC, you must make two findings:

- (1) find in favor of Ms. Robison on either her disparate treatment claim or her sexually hostile work environment claim; and
- (2) find that Defendant EPC engaged in discriminatory conduct with “malice or with reckless indifference” to Ms. Robison’s right to be free of sex-based discrimination. (The term “malice or reckless indifference” is defined for you in Final Instruction No. 10).

If you make both of these findings, then in addition to compensatory damages, you may, but are not required to, award Plaintiff an additional amount as punitive damages if you find it is appropriate to punish EPC or to deter EPC from like conduct in the future. Remember, whether to award Kimberly Robison punitive damages and the amount of those punitive damages are within your sound discretion.

---

**FINAL INSTRUCTION NO. 10 — “MALICE OR WITH RECKLESS  
INDIFFERENCE” DEFINED**

For the purpose of imposing punitive damages against EPC, “malice” means the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury. “Reckless indifference” means acting with knowledge of a substantial risk of harm to another. The terms “malice” or “reckless indifference” pertain to EPC’s knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination.

To be liable in punitive damages, an employer must at least discriminate in the face of a perceived risk that its actions will violate federal law.

Factors you may consider in awarding punitive damages include, but are not limited to, the following:

- the nature of the defendant's conduct;
  - the impact of the defendant's conduct on the plaintiff;
  - the relationship between the plaintiff and the defendant;
  - the likelihood that the defendant would repeat the conduct if a punitive award is not made; the defendant's financial condition;
  - Ms. Robison’s actual damages; and any other circumstances shown by the evidence, including any circumstances of mitigation, that bear on the question of the size of any punitive award.
-



## FINAL INSTRUCTION NO. 11 — "ASSAULT" CLAIM – ESSENTIAL ELEMENTS

In order to prove the claim of assault, Ms. Robison must prove the following propositions:

1. That Defendant Reza Kargarzadeh made unwanted sexual advances toward Plaintiff Kimberly Robison, including unwanted and unsolicited physical touching.
2. The act was done with the intent to put Plaintiff in fear of physical contact which would be insulting or offensive.

*(Note: "Intent" means doing something on purpose as opposed to doing something accidentally. Because "intent" requires a finding of what a person is thinking when doing an act, it is seldom capable of being proven by direct evidence. You may use your common experience to determine what a person's intent was when committing an act.)*

3. Plaintiff reasonably believed that the act would be carried out immediately.
4. Mr. Kargarzadeh's act was a proximate cause of Ms. Robison's damage.

*(Note: The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.)*

5. The amount of her damages.

If Ms. Robison has failed to prove all 5 of these essential elements, then your verdict must be for Defendant Reza Kargazadeh on this assault claim.

If, however, the Plaintiff has proven all of these essential elements, then your verdict must be for the Plaintiff. If you find that Plaintiff has proven her assault claim, then figure the amount of her damages using Final Instruction No. 11 called "Assault damages."

---

## FINAL INSTRUCTION NO. 12 — ASSAULT DAMAGES

If you find that Plaintiff has proven her claim of assault against Defendant Reza Kargarzadeh as explained in Final Instruction No. 11, then determine the amount of damages to award Plaintiff for this claim. The damages available are:

- <sup>RWP</sup> ~~present~~ emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life (calculated from the time of her injury to the date of your verdict);

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture. The amount you assess for assault damages must not exceed the amount caused by Mr. Kargazadch as proved by the evidence.

---

### FINAL INSTRUCTION NO. 13 — DUTIES OF DELIBERATION

In conducting your deliberations and returning our verdict, there are certain rules you must follow.

**First**, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

**Second**, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous;

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.


Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in this case.

**Third**, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone — including me — how your votes stand numerically.

**Fourth**, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be — that is entirely for you to decide.

**Finally**, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the court security officer that you are ready to return to the courtroom.

Entered this 21<sup>st</sup> day of December, 2000.

  
ROBERT W. PRATT  
U.S. DISTRICT JUDGE